



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 49 and 52**

**[EPA-HQ-OAR-2015-0782; FRL-9947-31-OAR]**

**RIN 2060-AS56**

### **Rescission of Preconstruction Permits Issued Under the Clean Air Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is proposing to revise a limitation on the rescission of stationary source preconstruction permits that is contained in the federal New Source Review (NSR) regulations. This proposal would amend the EPA's federal Prevention of Significant Deterioration (PSD) regulations to remove a date restriction from the current permit rescission provision. Other than removing the date restriction, the proposed rule is not intended to alter the circumstances under which an NSR permit may be rescinded. This proposal would also add a corresponding permit rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian country. This rule also proposes to correct an outdated cross-reference to another part of the regulations.

**DATES:** *Comments.* Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Public hearing.* If anyone contacts us requesting a public hearing on or before **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent *Federal Register* document.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0782, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** For general information on this proposed rule, please contact Ms. Jessica Montanez, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-3407 or by email at [montanez.jessica@epa.gov](mailto:montanez.jessica@epa.gov). To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-0641 or by email at [long.pam@epa.gov](mailto:long.pam@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. How is this Federal Register document organized?*

The information presented in this document is organized as follows:

- I. General Information
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  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- VIII. Statutory Authority

*B. Does this action apply to me?*

Entities potentially affected by this proposed rule include permit reviewing authorities responsible for the permitting of stationary sources of air pollution. This includes the EPA Regions, and both EPA-delegated air programs and EPA-approved air programs that are operated by state, local and tribal governments and that implement the federal NSR rules.

Entities also potentially affected by this proposed rule include owners and operators of stationary sources that are subject to air pollution permitting under the Clean Air Act (CAA or Act).

*C. What should I consider as I prepare my comments for the EPA?*

*1. Submitting CBI.* Do not submit this information to the EPA through <https://www.regulations.gov> or email. Clearly mark the specific information that you claim to be CBI. For CBI in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

*2. Tips for preparing comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, *Federal Register* date and page number).
- Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used to support your comment.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns wherever possible, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*D. How can I find information about a possible public hearing?*

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-0641 or by email at [long.pam@epa.gov](mailto:long.pam@epa.gov).

*E. Where can I obtain a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this *Federal Register* document will be posted at <https://www.epa.gov/nsr/nsr-regulatory-actions>. The docket contains, among other things, a comparison file that reflects how the proposed regulatory revisions compare to the current rules.

## **II. Overview of Action**

The EPA is proposing to remove a date restriction by revising the permit rescission provision contained in its federal PSD permitting regulations. 40 CFR 52.21(w). This current provision authorizes the owner or operator of a stationary source that holds a PSD permit based on rules in effect on or before July 30, 1987, to request a rescission of their permit or a part of their permit. 40 CFR 52.21(w)(2).

Through this rulemaking action, we are proposing to remove the July 30, 1987, date from the 40 CFR 52.21(w)(2) provision. Experience has shown that there can be circumstances where

a permit based on rules in effect after July 30, 1987, may qualify for rescissions under the criteria in paragraph (w)(3) of the current regulations. In one recent instance, the EPA determined a need for rescission authority after the Supreme Court of the United States (Supreme Court) determined that PSD permits were not required for new sources or modifications to existing sources that only emit greenhouse gases (GHGs). However, because of the date restriction in the current rule, the EPA had to revise the regulation in order to enable permits to be rescinded, consistent with the Supreme Court's ruling. Thus, the EPA is proposing to remove the July 30, 1987, date restriction in order to eliminate the need for such actions in the future. We believe that removal of the date is justified to enable the rule to cover other cases where a rescission of a permit may be appropriate under the criteria in paragraph (w)(3) of the current permit rescission provision.

Nevertheless, the EPA still intends to limit the rescission of permits to circumstances where the requirement for a source to meet the conditions of a major NSR permit is no longer present. Thus, we are not proposing to revise the criteria under which an owner or operator may qualify for rescission of an NSR permit. However, we are proposing to clarify that a rescission of a permit is not automatic; approval of a request for a rescission is contingent on an applicant's adequate demonstration that the permit is no longer needed and the permit reviewing authority's concurrence with the demonstration. Thus, a permit reviewing authority retains the discretion to deny a request for a permit rescission if it determines that the eligibility criteria are not satisfied.

We are proposing to add a similar permit rescission provision under the major nonattainment NSR rules that apply in Indian country at 40 CFR part 49. This part of the federal NSR program currently does not contain a provision addressing the rescission of major

nonattainment NSR permits in Indian country. This rulemaking action also proposes to correct a cross-reference in the current rule provision.

### **III. Background**

The major NSR program contained in parts C and D of title I of the CAA is a preconstruction review and permitting program applicable to new major sources and major modifications at such sources. In areas meeting the National Ambient Air Quality Standards (NAAQS) (“attainment areas”) or for which there is insufficient information to determine whether the NAAQS are met (“unclassifiable areas”), the NSR requirements under part C of title I of the Act apply. We call this program the Prevention of Significant Deterioration program. In areas not meeting the NAAQS (“nonattainment areas”), the preconstruction permitting program is required under part D of the CAA. We call this program the Nonattainment NSR (NA NSR) program. Collectively, we also commonly refer to these two programs as the major NSR program. These rules are contained in 40 CFR 51.165, 51.166, 52.21 and 52.24 and 40 CFR part 51, appendices S and W.<sup>1</sup> The CAA also requires that State Implementation Plans (SIP) include measures to assure that achievement of the NAAQS is not impeded by construction of other sources that are not subject to the major NSR requirements. We call this program “minor NSR.”

While the CAA establishes requirements for the permitting of construction of new major sources or modifications of such sources, it does not specify how long a permit is to remain in effect or whether there are circumstances under which an NSR permit may be invalidated or rescinded. *See, e.g.*, CAA section 165. The EPA has interpreted this silence to mean that an NSR permit should remain in effect for as long as the new or modified source continues to operate.

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<sup>1</sup> In addition, the major NA NSR rules that apply in Indian country can be found at 40 CFR part 49.

However, the absence of a statutory provision on the continuing viability of and need for a permit does not suggest that the EPA lacks the authority and discretion to rescind a permit under some circumstances, such as when a final court ruling clarifies the meaning of some part of the CAA. Over the years, the EPA has used this authority and discretion to rescind permits under limited circumstances.

40 CFR 52.21(w) authorizes an owner or operator of a source to request, and the EPA Administrator<sup>2</sup> to grant, a rescission of a PSD permit if the owner or operator shows that the PSD regulations do not apply.

The original intent of the 40 CFR 52.21(w) provision was to create a means by which a limited category of sources that received a permit under the EPA's 1978 PSD regulations could be relieved of the requirements of their permits, after the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) determined that portions of those regulations were inconsistent with the CAA. The sources in question were ones that would no longer be considered "major" under our 1980 amendments to the PSD regulations, which were promulgated in response to the D.C. Circuit Court ruling.<sup>3</sup> The original paragraph (w) only applied to permits issued under the regulations in effect between June 19, 1978 (the date the first PSD regulations were published in the *Federal Register*), and August 7, 1980 (the effective date of the PSD amendments that included the new paragraph (w)).

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<sup>2</sup> The rescission regulation at 40 CFR 52.21(w) is intended to be a delegable authority. The use of the term "Administrator" in our regulations is not intended to impede delegation. For example, for federally-issued permits, since the EPA Regional offices issue the permits in their jurisdictions, rescission authority is typically delegated – usually to either an EPA Regional Administrator or Division Director.

<sup>3</sup> August 7, 1980, 45 FR 52676.



In 1987, the EPA revised 40 CFR 52.21(w) to change the effective date requirement to apply to permits that were issued based on rules in effect on or before July 30, 1987. *See* 52 FR 24672, 24689 (July 1, 1987). The EPA made this revision in concert with its amendments to the NAAQS for particulate matter (PM), which, among other things, transitioned the PM pollution indicator from total suspended particles to PM<sub>10</sub>. This revision of 40 CFR 52.21(w) effectively enabled rescission authority to apply to sources and modifications that were no longer major using the new PM<sub>10</sub> indicator. Thus, the July 30, 1987, date stipulation that remains in 40 CFR 52.21(w) is an artifact of the 1987 regulatory revisions to transition to the revised PM<sub>10</sub> indicator.

Following the changes made in 1987, 40 CFR 52.21(w) remained unchanged until almost three decades later when the EPA revised 40 CFR 52.21(w), in response to a Supreme Court decision, to expressly allow rescission of permits granted for sources based solely on the

emissions of GHGs.<sup>4</sup> See May 7, 2015; 80 FR 26183. This 2015 regulatory action did not revise or remove the July 30, 1987, date, but was a targeted effort to expeditiously authorize the rescission of PSD permits that were required solely based on GHG emissions.

However, in the preamble to that 2015 rule, the EPA signaled its intent to undertake a subsequent rulemaking action to apply the permit rescission provision to permits issued after July 30, 1987, and to eliminate the need to conduct targeted rulemakings in the future. 80 FR 26186.

The current regulations require that the Administrator provide adequate public notice of the final permit rescission determination. Thus, the provision does not require that the EPA provide advance notice of the permit rescission determination. However, we believe that public notice and comment procedures – similar to those used when proposing a draft permit – may be appropriate in certain circumstances. This could occur when a permit rescission determination is not straightforward (*e.g.*, possible differences in interpretation over the change in the law that is the basis for the rescission request) or when there is increased public interest in the facility requesting a permit rescission. In these cases, while prior notice of the permit rescission determination is not required, the permit reviewing authority has discretion to provide notice of

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<sup>4</sup> The Supreme Court determined that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or a modification thereof) required to obtain a PSD permit. *UARG v. EPA*, 134 S. Ct. 2427 (2014). In accordance with the Supreme Court decision, on April 10, 2015, the D.C. Circuit issued an amended judgment vacating portions of the particular provisions of the EPA's regulations implementing the EPA's PSD and Title V GHG Tailoring Rule. On August 19, 2015, the EPA amended its PSD regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated.

the rescission and to solicit comment (*e.g.*, by way of a public announcement or public hearing) before finalizing a permit rescission determination. Having this additional public input could be very important if the rescission is controversial in nature. This is consistent with the approach the EPA has recommended recently in guidance on permit extensions.<sup>5</sup>

Furthermore, the EPA interprets 40 CFR 124.15 of its regulations to apply to a number of PSD permit actions, including permit rescissions.<sup>6</sup> Thus, a decision to rescind a PSD permit is a “final permit decision” under 40 CFR 124.15. As a result, under 40 CFR 124.19, a decision to rescind a permit under 40 CFR 52.21(w) is subject to review by the EPA’s Environmental Appeals Board. After this appeal procedure is exhausted, a permit rescission determination may, under CAA 307(b)(1), be subject to judicial review in the United States Court of Appeals for the appropriate circuit.

#### **IV. Proposed Revisions**

These proposed revisions are intended to provide greater flexibility and clarity for improved implementation of the permit rescission provision. The specific proposed changes are explained in this section, and we are requesting comment on all aspects of this proposal.

##### *A. Removal of Date Restriction*

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<sup>5</sup> Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2) (January 31, 2014). <https://www.epa.gov/sites/production/files/2015-07/documents/extend14.pdf>.

<sup>6</sup> 40 CFR 124.15(a) uses the term “terminate,” which is synonymous with a rescission of a permit.

In this action, the EPA proposes to remove the date restriction of July 30, 1987, from the current 40 CFR 52.21(w) provision. This approach is consistent with our recent rule to authorize rescission of specific types of permits issued after July 30, 1987, in response to a decision by the Supreme Court regarding GHGs. If the EPA finalizes this proposed revision, rescission authority would extend to PSD permits issued after this date when the applicant shows that the requirements of 40 CFR 52.21 “would not apply to the source or modification.” In addition, the specific language in paragraphs (w)(2) and (w)(3) that the EPA added in 2015 to accommodate the rescission of certain types of GHG PSD permits would no longer be required, so we are concurrently proposing in this action to delete the GHG permit rescission language adopted in the 2015 rulemaking.

As explained in the “Background” section of this preamble, the creation of the original rescission provision was aimed at addressing a specific need with regard to responding to the D.C. Circuit Court decision in *Alabama Power*.<sup>7</sup> In 1987, the EPA recognized another circumstance in which rescission of permits may be justified – the change of the PM indicator to PM<sub>10</sub>. In 2015, the EPA identified an additional need to extend the rescission authority beyond its original scope after the Supreme Court decision regarding GHGs. Thus, over the years, the EPA has periodically found a need to expand the rescission provision through a regulatory action beyond its original scope as new circumstances have arisen. These and other experiences since 1980 have shown that there is a periodic need to utilize PSD permit rescission authority. We would expect this pattern to continue in the event of additional court decisions that narrow the scope of sources required to obtain a PSD permit. Where a source obtained a PSD permit in

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<sup>7</sup> *Alabama Power Company v. Costle*, 606 F.2d 1068 (D.C. Cir. 1979), modified, 636 F.2d 323 (D.C. Cir. 1979).

reliance on the EPA regulations that a court subsequently determined to be unnecessary or inappropriate, the EPA would expect to conclude that 40 CFR 52.21 “would not apply to the source or modification.” Furthermore, the EPA recognizes there could be circumstances not previously considered by the EPA that may lead a source to request a rescission of their permit and a permit reviewing authority to grant the request.

The EPA is not proposing to change the criteria under which an owner or operator may qualify for rescission of an NSR permit. Requests for permit rescission are very case-specific and require an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be shown that the requirements of 40 CFR 52.21 “would not apply to the source or modification.”

Thus, we are proposing to eliminate the date restriction so that the EPA – and other permitting authorities that implement 40 CFR 52.21(w) – may in the future consider, on a case-by-case basis, whether a source that requests a permit rescission is eligible for rescission of its permit. The regulatory change we are proposing is limited in nature, and the EPA continues to believe that rescission is appropriate only in limited circumstances. This is because the EPA views the role of the NSR program to authorize the construction and initial operation of a source or a modification and, assuming the source was constructed as originally permitted, there should be very few cases in which the original authorization should be rescinded.

#### *B. Discretion of the Permitting Reviewing Authority*

While we are proposing to retain the criteria under which a rescission is authorized, we are also proposing to clarify that the rescission of a permit requires an exercise of discretion by the permit reviewing authority. In this action, the EPA proposes to revise 40 CFR 51.21(w)(3) to

make it clear that the provision does not create a mandatory duty on the Administrator to grant a rescission request.

The 1980 preamble speaks of the EPA needing “adequate information with which to make a sound decision” to rescind a permit. It also states that it “will have the expertise and objectivity necessary to check adequately whether the permittee has applied the intricate applicability rules correctly.” August 7, 1980; 45 FR 52682. Thus, the responsible authority at the permitting agency has always had the authority to grant or deny a rescission request based on an analysis of the request for a permit rescission and a determination of whether it is appropriate to grant or deny the request to rescind the permit. The EPA believes that it is appropriate to view the existing 40 CFR 52.21(w)(3) provision as a whole, including the last phrase “... if the application shows that this section would not apply to the source or modification.” We believe that the second phrase conditions the first phrase (“The Administrator shall grant an application for rescission”) on the fact that an adequate demonstration must be made by the permit applicant.

Thus, the EPA is proposing to replace the word “shall” with the word “may” in this provision, without making any other revision to 40 CFR 52.21(w)(3). This revision is intended to make clear that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 “would not apply to the source or modification.” The EPA does not believe this changes the meaning or intent of the existing provision, but rather clarifies the approvability of the request by the Administrator.

### *C. Incorrect Cross Reference*

We are proposing to correct the first paragraph of (w), which has an incorrect cross reference. Paragraph (w)(1) currently references 40 CFR 52.21 paragraph (s),, but 40 CFR

52.21(s) pertains to environmental impact statements and does not address the expiration of a permit.

We are therefore proposing to revise the reference in paragraph (w)(1) to refer to paragraph (r), which addresses permit expiration. 40 CFR 52.21(r)(2)

*D. Rescission Authority for NA NSR Permits in Indian Country*

This action also proposes to add a provision to 40 CFR 49.172 to provide rescission authority for major NA NSR permits in Indian country. The EPA proposes that the provision added to 40 CFR 49.172 would be similar to the provision at 40 CFR 52.21(w) and would reflect the public notice requirements included in that rule. The EPA believes it is appropriate to allow rescission of NA NSR permits in Indian country in limited, case-specific circumstances for the same reasons it is appropriate to allow rescission of PSD permits in narrow circumstances.

Creating a rescission provision in 40 CFR part 49 for major NA NSR permits in Indian country would ensure that all federal programs for major source permitting have rescission authority. PSD permits issued to sources in Indian country are federal permits and consequently subject to 40 CFR 52.21, so they would be subject to the same revisions to 40 CFR 52.21 that are being proposed in this action.

*E. Rescission Authority for Other Air Permitting Programs*

In the case of sources in the Outer Continental Shelf (OCS), the EPA's OCS air regulations at 40 CFR 55 establish the applicable requirements, which include federal air pollution preconstruction permit requirements. 40 CFR part 55 refers to rescinding a preconstruction permit issued to an OCS source and incorporates by reference 40 CFR 52.21. Thus, any regulatory revisions to 40 CFR 52.21(w) would automatically apply to applicable permit requirements incorporated in part 55. *See* 40 CFR 55.6(b)(5) and 55.13(d). As a result, the EPA does not see a need to revise the Part 55 permitting regulations.

While the EPA's regulations for SIP-approved programs in 40 CFR 51.165 and 51.166 do not include provisions for permit rescissions, we have previously stated that we would approve such provisions if states were to adopt them.<sup>8</sup> In addition, this rule is not intended to alter minor source construction permit requirements that may apply in the place of major NSR permit conditions that are no longer applicable to a source modification.

Consequently, we are proposing that the rules on rescinding preconstruction permits would only reside in the federal major NSR program rules at 40 CFR parts 49 and 52 (and, by extension, part 55 as noted previously). The EPA has previously explained that other permit reviewing authorities are free to adopt our rescission rule provisions or propose their own and request approval by the EPA.

#### *F. Public Notice*

We note that a forthcoming EPA rule has proposed to amend the second sentence of paragraph (w)(4) of 40 CFR 52.21 to remove the mandatory newspaper notice requirement and to require electronic noticing of rescission determinations. *See* December 29, 2015; 80 FR 81234. We are not taking comment on these separately proposed revisions to paragraph (w)(4) of 40 CFR 52.21 in this rule proposal, and we direct the reader to that separate rulemaking for further information with regard to the noticing of permit rescissions. In this action, the EPA is not proposing to revise 40 CFR 52.21(w)(4) in the permit rescission provision.

### **V. Implementation**

Upon promulgating this action, the rule would become effective within 30 days for permit reviewing authorities that implement the federal program rules at 40 CFR parts 49 and 52.

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<sup>8</sup> *See* August 7, 1980; 45 FR 52686 and 52688.



This includes the EPA Regions and other permit reviewing authorities that are delegated authority by the EPA to issue PSD permits on behalf of the EPA (via a delegation agreement) and permit reviewing authorities that have their own PSD rules approved by the EPA in a SIP and the SIP incorporates by reference 40 CFR 52.21(w) and automatically updates when the federal rules are amended. Since this action is not amending 40 CFR part 51, there are no implementation requirements for permit reviewing authorities that implement the part 51 regulations through an approved SIP.

## **VI. Environmental Justice Considerations**

We do not believe that these proposed revisions and additions to the rescission of federal major NSR permits would have any effect on environmental justice communities.

## **VII. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060-0003 for the PSD and NA NSR permit programs. We believe that the burden associated with rescinding federal NSR permits is already accounted for under the approved information collection requests.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments, and none of these governments would qualify as a small entity. Other types of small entities are not directly subject to the requirements of this action.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded federal mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. Specifically, these proposed revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment.

**VIII. Statutory Authority**

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

**List of Subjects**

*40 CFR Part 49*

Environmental protection, Administrative practice and procedure, Air pollution control

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference.

Dated: May 27, 2016.

Gina McCarthy,  
Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## **PART 49 – INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT**

1. The authority citation for part 49 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

### **Subpart C – General Federal Implementation Plan Provisions**

2. Section 49.172 is amended by adding paragraph (f) to read as follows:

#### **§49.172 Final permit issuance and administrative and judicial review.**

\* \* \* \* \*

(f) *Can my permit be rescinded?*

(1) Any permit issued under this section or a prior version of this section shall remain in effect until it is rescinded under this paragraph.

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(3) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(3) The reviewing authority may grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the reviewing authority rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission determination in accordance with one or more of the following methods:

(i) The reviewing authority may mail or email a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.

(ii) The reviewing authority may post the notice on its web site.

(iii) The reviewing authority may publish the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a Tribal newspaper or newsletter.

(iv) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, Tribal environmental offices, community centers or other gathering places in the community.

(v) The reviewing authority may employ other means of notification as appropriate.

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

3. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

### **Subpart A – General Provisions**

4. Section 52.21 is amended by revising paragraphs (w)(1) through (3) to read as follows:

#### **§52.21 Prevention of significant deterioration of air quality.**

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(w) \* \* \*

(1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r) of this section or is rescinded under this paragraph.

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in §52.21 paragraph (w)(3) may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator may grant an application for rescission if the application shows that this section would not apply to the source or modification.

\* \* \* \* \*

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